

ORIGINAL



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14 Attorneys for Arizona Public Service Company

15 **BEFORE THE ARIZONA CORPORATION COMMISSION**

16 COMMISSIONERS

17 TOM FORESE, Chairman
18 BOB BURNS
19 DOUG LITTLE
20 ANDY TOBIN
21 BOYD DUNN

22 IN THE MATTER OF THE
23 APPLICATION OF ARIZONA PUBLIC
24 SERVICE COMPANY FOR A HEARING
25 TO DETERMINE THE FAIR VALUE OF
THE UTILITY PROPERTY OF THE
COMPANY FOR RATEMAKING
PURPOSES, TO FIX A JUST AND
REASONABLE RATE OF RETURN
THEREON, TO APPROVE RATE
SCHEDULES DESIGNED TO DEVELOP
SUCH RETURN.

DOCKET NO. E-01345A-16-0036

26 IN THE MATTER OF FUEL AND
27 PURCHASED POWER PROCUREMENT
28 AUDITS FOR ARIZONA PUBLIC
SERVICE COMPANY.

DOCKET NO. E-01345A-16-0123

MOTION FOR PROTECTIVE ORDER

AZ CORPORATION COMMISSION
DOCKET CONTROL

2017 JAN -5 P 4:31

Arizona Corporation Commission

DOCKETED

JAN - 5 2017

DOCKETED BY

1 EFCA has taken the next step in its exploitation of the discovery rules by noticing
2 the deposition of two more witnesses: Leland Snook and Charles Miessner.¹ What is, at
3 most, an extraordinary discovery tool is fast becoming the tool of choice. There are far
4 less burdensome and more effective means for EFCA to obtain the information it needs
5 than noticing the deposition of APS's two key rate personnel for January 16 and 17
6 while APS is trying to prepare rebuttal testimony on an expedited schedule and conduct
7 analyses needed to support settlement discussions.²

8 APS understands that Barbara Lockwood's deposition was permitted to proceed.
9 But APS renews its objection to this discovery tool as unduly burdensome, not
10 appropriate for Commission rate proceedings, and entirely unnecessary in light of pre-
11 filed testimony and liberal data request provisions. Pursuant to Ariz. R. Civ. P.
12 26(b)(1)(C) and 26(c), APS requests that the Presiding Officer grant a protective order
13 and relieve APS from having to produce Messrs. Snook and Miessner from appearing
14 for depositions.³ If the depositions do proceed, APS requests that: (i) like Barbara
15 Lockwood's deposition, they are limited to a maximum of 8 hours for all parties; (ii)
16 Messrs. Snook and Miessner will only be deposed once (*i.e.* no second deposition after
17 rebuttal testimony is filed); and (iii) EFCA be required to identify any other depositions
18 it intends to take this proceeding.

19 MEMORANDUM

20 **I. ABSENT AN EXTRAORDINARY SHOWING, DEPOSITIONS SHOULD** 21 **NOT BE PERMITTED IN THIS PROCEEDING.**

22
23
24 ¹ Both depositions notices are attached as Exhibit 1.

25 ² APS intends to engage in revenue requirement settlement discussions on January 12 and 13, which
26 could go longer if beneficial and feasible. And APS anticipates having another round of discussions after
27 receiving intervenors' direct testimony on rate design on January 27, but before APS's rebuttal
28 testimony is due on February 17.

³ On January 5, 2017 Melissa Krueger, attorney for APS, conferred by telephone with Court Rich,
attorney for EFCA, about the depositions and this motion. The parties could not reach agreement.
However, in the event that the Presiding Officer denies this motion and allows the depositions to
proceed, Mr. Rich represented that EFCA would agree to an 8 hour time limit for all parties and that
each deponent will only be deposed once.

1 In prior filings, APS has described the difference between typical civil litigation,
2 in which depositions are commonplace, and Commission rate proceedings, in which
3 depositions are exceedingly rare. The former type of proceeding involves an
4 investigation into historical events to determine parties' rights and responsibilities with
5 regard to those facts. Witnesses' abilities to perceive and recall those facts is critical, and
6 a deposition is appropriately suited to "lock in" a witness' testimony before trial.

7 Commission rate proceedings, on the other hand, do not hinge on the ability of
8 witnesses to perceive or recall historical events. Instead, Commission rate proceedings
9 investigate facts of a scientific, economic or financial nature to facilitate the creation of
10 policy—the prospective determination of how rates should be set. Depositions are
11 particularly ill-suited for this task. Witnesses in Commission rate proceedings
12 fundamentally offer, or at least support, policy conclusions based on experience and
13 subject matter expertise.

14 Asking witnesses to recall, in real time and without the benefit of time to reflect
15 and consult prior analysis, facts or positions simply does not promote the exchange of
16 useful information upon which sound policy can be built. Moreover, assessing issues in
17 Commission rate proceedings can often require multiple perspectives, from distribution
18 facilities to resource planning to finance and economics. Getting a single witness'
19 perspective, rather than the Company's final answer on a topic through a data request, is
20 incredibly inefficient. And if a witness can only offer their general understanding or
21 recollection of a fact or issue (as often happens in depositions that stray from the
22 personal recollection of observed, historical facts), the deposition was entirely a waste of
23 time and resources. Instead of "locking in" what a witness recalls and doesn't recall
24 before a trial (a valuable objective in of itself in typical "plaintiff v. defendant" civil
25 litigation), the question will have to be asked again in a data request.

1 **II. RULE 26(b) PERMITS LIMITING DEPOSITIONS AS UNDULY**
2 **BURDENSOME AND UNNECESSARY.**

3 EFCA started with one deposition, but has now noticed two more. Although
4 depositions are permissible under the Rules of Civil Procedure, they are designed for
5 typical litigation, not Commission rate proceedings. They are so inefficient in this
6 context as to be unduly burdensome, and the Presiding Officer has discretion to curb
7 their use:

8 The frequency or extent of use of the discovery methods set forth in
9 subdivision (a) may be limited by the court if it determines that: (i) the
10 discovery sought is unreasonably cumulative or duplicative, or obtainable
11 from some other source that is either more convenient, less burdensome,
12 or less expensive; (ii) the party seeking discovery has had ample
13 opportunity by discovery in the action to obtain the information sought....⁴

14 In this proceeding, ample ground exists to curb EFCA's further pursuit of depositions.

15 Depositions in Commission rate proceedings are an extraordinarily intrusive and
16 wasteful means to obtain discovery. Far more efficient and effective means are readily
17 available. In all of the rate proceedings that began or occurred in 2015 and 2016,
18 including this one, not a single party sought to take a witness' deposition. In this
19 proceeding, APS has received 2,692 data requests. EFCA itself has now propounded 21
20 sets of data with a total of 232 unique subparts. This is on top of the pre-filed Direct,
21 Rebuttal, and Rejoinder Testimonies that APS has filed or will file. There is no shortage
22 of information being provided in this docket. Not only are further depositions
23 unreasonably cumulative, but EFCA has had (and continues to have) ample opportunity
24 to obtain the information it seeks through data requests.

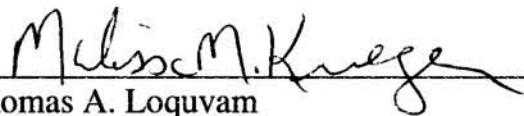
25 **CONCLUSION**

26 Even while EFCA refuses to provide basic information about itself, it seeks
27 extraordinary discovery from APS, and during what might be the most labor intensive
28 period of the entire proceeding for APS. APS requests that the Presiding Officer grant a
protective order and relieve APS from the obligation to produce Messrs. Snook and

⁴ Ariz. R. Civ. P. 26(b)(1)(C).

1 Miessner for deposition. If the depositions are authorized, APS requests that: (i) they are
2 limited to a maximum of 8 hours for all parties; (ii) Messrs. Snook and Miessner will
3 only be deposed once (*i.e.* no second deposition after rebuttal testimony is filed); and
4 (iii) EFCA be required to identify any other depositions it intends to take in this
5 proceeding.

6
7 RESPECTFULLY SUBMITTED this 5th day of January 2017.

8
9 By: 
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14 Attorneys for Arizona Public Service Company

15 ORIGINAL and thirteen (13) copies
16 of the foregoing filed this 5th day of
17 January 2017, with:

18 Docket Control
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20 1200 West Washington Street
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22 COPY of the foregoing emailed / mailed
23 this 5th day of January 2017, to:

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EXHIBIT 1

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2016 DEC 30 P 1:49

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8 Attorney for Energy Freedom Coalition of America

BEFORE THE ARIZONA CORPORATION COMMISSION

DOUG LITTLE
CHAIRMAN

BOB STUMP
COMMISSIONER

BOB BURNS
COMMISSIONER

TOM FORESE
COMMISSIONER

ANDY TOBIN
COMMISSIONER

IN THE MATTER OF THE
APPLICATION OF ARIZONA PUBLIC
SERVICE COMPANY FOR A
HEARING TO DETERMINE THE FAIR
VALUE OF THE UTILITY PROPERTY
OF THE COMPANY FOR
RATEMAKING PURPOSES, TO FIX A
JUST AND REASONABLE RATE OF
RETURN THEREON, TO APPROVE
RATE SCHEDULES DESIGNED TO
DEVELOP SUCH RETURN.

DOCKET NO. E-01345A-16-0036

DOCKET NO. E-01345A-16-0123

IN THE MATTER OF FUEL AND
PURCHASED POWER
PROCUREMENT AUDITS FOR
ARIZONA PUBLIC SERVICE
COMPANY.

ENERGY FREEDOM COALITION
OF AMERICA'S NOTICE OF
DEPOSITION OF
LELAND R. SNOOK

YOU ARE HEREBY NOTIFIED that the deposition will be taken upon oral examination
of the person whose name is stated below at the time and place stated before an officer authorized
by law to administer oaths.

Arizona Corporation Commission

DOCKETED

DEC 30 2016

DOCKETED BY

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PERSON TO BE EXAMINED: Leland R. Snook
DATE OF DEPOSITION: January 16, 2017
TIME OF DEPOSITION: 9:00 a.m.
PLACE OF DEPOSITION: Rose Law Group pc
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Scottsdale, Arizona 85251
COURT REPORTER: COASH & COASH

DATED this 30th day of December, 2016.

/s/ Court S. Rich
Court S. Rich
Rose Law Group pc
Attorney for EFCA

1 Original and 13 copies filed on
2 the 30th day of December, 2016 with:

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4 Arizona Corporation Commission
5 1200 W. Washington Street
6 Phoenix, Arizona 85007

7 I hereby certify that I have this day served a copy of the foregoing document on all parties of
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Exhibit 1

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2016 DEC 30 P 1:49

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BOB STUMP
COMMISSIONER

BOB BURNS
COMMISSIONER

TOM FORESE
COMMISSIONER

ANDY TOBIN
COMMISSIONER

12 **IN THE MATTER OF THE**
13 **APPLICATION OF ARIZONA PUBLIC**
14 **SERVICE COMPANY FOR A**
15 **HEARING TO DETERMINE THE FAIR**
16 **VALUE OF THE UTILITY PROPERTY**
17 **OF THE COMPANY FOR**
18 **RATEMAKING PURPOSES, TO FIX A**
19 **JUST AND REASONABLE RATE OF**
20 **RETURN THEREON, TO APPROVE**
21 **RATE SCHEDULES DESIGNED TO**
22 **DEVELOP SUCH RETURN.**

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19 **IN THE MATTER OF FUEL AND**
20 **PURCHASED POWER**
21 **PROCUREMENT AUDITS FOR**
22 **ARIZONA PUBLIC SERVICE**
23 **COMPANY.**

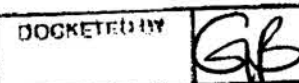
ENERGY FREEDOM COALITION
OF AMERICA'S NOTICE OF
DEPOSITION OF
CHARLES A. MIESSNER

24 **YOU ARE HEREBY NOTIFIED** that the deposition will be taken upon oral examination
25 of the person whose name is stated below at the time and place stated before an officer authorized
26 by law to administer oaths.

Arizona Corporation Commission

DOCKETED

DEC 30 2016



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PERSON TO BE EXAMINED: Charles A. Miessner
DATE OF DEPOSITION: January 17, 2017
TIME OF DEPOSITION: 9:00 a.m.
PLACE OF DEPOSITION: Rose Law Group pc
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DATED this 30th day of December, 2016.

/s/ Court S. Rich
Court S. Rich
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Attorney for EFCA

1 Original and 13 copies filed on
2 the 30th day of December, 2016 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington Street
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7 *I hereby certify that I have this day served a copy of the foregoing document on all parties of
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